

FILED
AT 12:00 O'CLOCK
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APR 29 2010

IN THE COUNTY COURT AT LAW NUMBER ONE OF ANGELINA COUNTY

STATE OF TEXAS

JOAN CHASTAIN,
County Clerk, County Court at Law
Angelina County, Texas
BY _____

TIMOTHY CLARK CRUSE

VS.

ZURICH AGENCY SERVICES, INC.
AND ABEL MONROY OLVERA

§
§
§
§
§
§

CAUSE NO. 16415

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **TIMOTHY CLARK CRUSE**, hereinafter called Plaintiff,
complaining of and against **ZURICH AGENCY SERVICES, INC. AND ABEL
MONROY OLVERA**, hereinafter called Defendants, and in support of a cause of action
which show as follows:

I.

PARTIES

Plaintiff, **TIMOTHY CLARK CRUSE** is a resident of Angelina County, Texas.

Defendant, **ZURICH AGENCY SERVICES, INC.** is an insurance company
organized under the laws of the State of Texas and authorized to engage in the business
of insurance in Texas, and having as a principle place of business at 1400 American
Lane, Schaumburg, Illinois 60196 and may be served with process through certified mail,
restricted delivery to 211 E. 7th Street, Suite 620, Austin, Texas 78701.

Defendant, **ABEL MONROY OLVERA** is a resident of Lufkin, Angelina
County, Texas and may be served with process by the Angelina County Sheriff's
Department at his residence located at 1007 Columbus Street, Lufkin, Texas 75904.

Exhibit D

II.

DISCOVERY

Discovery is intended to be conducted under Level II.

III.

FACTS

Plaintiff was involved in a motor vehicle accident on May 5, 2008 on Highway 59 South Frontage Road in Livingston, Polk County, Texas. As a result, Plaintiff suffered extensive and extreme personal injuries that have resulted in permanent damage to his body in general.

IV.

VENUE

Venue is proper in Angelina County, Texas because both Plaintiff and Defendant reside in Angelina County, Texas.

V.

NEGLIGENCE OF ABEL MONROY OLVERA

The collision described above, and the resulting injuries and damages suffered by Plaintiff, were proximately caused by the negligent conduct of ABEL MONROY OLVERA in one or more of the following respects:

1. Failure to maintain a proper lookout as a person of ordinary care would of kept under the same or similar circumstances;
2. Failure to make timely application of his brakes as a person using ordinary care would have done under the same or similar circumstances;

3. Failure to take proper evasive action to avoid the collision in question as a person using ordinary care would have done under the same or similar circumstances;
4. Failure to control his speed;
5. Failure to yield right of way;
6. Driving too fast under the conditions as they existed at the time of the accident.

Each of these acts and omissions comes singularly, or in combination, constitute a negligence that proximately caused the occurrence made the basis of this action and the Plaintiff's injuries and damages as described below.

VI.

CONTRACT OF INSURANCE

At the time of this accident Plaintiff had in effect with Defendant, Zurich Agency Services, Inc. a policy of insurance numbered CP0281728303 which provided underinsured motorists coverage benefits with limits of \$100,000.00 per accident. This policy was in effect at the time of the accident and all conditions precedent have been satisfied.

VII.

Despite the fact that Defendant has had more than adequate time to investigate this loss and has been provided with sufficient medical documentation and wage verification information, Defendant has failed to meet its contractual obligation under policy number CP0281728303 which provides underinsured motorists coverage to Plaintiff. A reasonably prudent insurance carrier, in the same or similar position, should

have seen with clarity its liability to pay damages to Plaintiff in the amount of its policy limits, i.e. \$100,000.00. Nevertheless, Defendant has failed to attempt in good faith to bring about a prompt, fair, and equitable settlement of the demands being made by Plaintiff.

VIII.

After having received notice of Plaintiff's losses clearly covered by the contract of insurance, as set out in the preceding paragraphs of this Petition, Defendant engaged in several unfair settlement practices, as numerated and declared as unfair or deceptive in Article 21.21 Section 4(10) of the Texas Insurance Code, including, but not limited to the following:

- a) Failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of Plaintiff's claim once Defendant's liability became reasonably clear.
- b) Failing to affirm or deny coverage within a reasonable time;
- c) Failing to conduct a thorough and reasonable investigation of the matter.

Plaintiff will show that these acts and omissions on Defendant's part were done knowingly, that is with an actual awareness of the falsity, unfairness, or deception of the conduct described. Consequently, the Plaintiff requests that the trier of fact or the Plaintiff's additional damages of up to three (3) times the sum of actual damages suffered.

IX.

DAMAGES

Plaintiff has suffered property damages, physical injuries, pain and suffering, medical bills, emotional anguish, physical impairment, lost wages, all past and future for which Defendants are liable. Defendant, **ZURICH AGENCY SERVICES, INC.** is liable under the underinsured motorists coverage afforded by the policy issued by Defendant to Plaintiff.

Plaintiff is also entitled to the 18% "penalty" as afforded by the Texas Insurance Code as well as prejudgment and postjudgment interest.

Plaintiff is also entitled to attorneys' fees.

Finally, Plaintiff is entitled to exemplary damages as provided in the Texas Insurance Code.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final hearing Plaintiff have judgment of and against Defendants, for all damages which he may reasonably establish, for prejudgment interest at the legal rate, for postjudgment interest at the legal rate, 18% penalty, exemplary damages, attorneys' fees, and costs of court, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted.



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ATTORNEYS FOR PLAINTIFF

IN THE COUNTY COURT AT LAW NUMBER ONE OF ANGELINA COUNTY

STATE OF TEXAS

| | | |
|-------------------------------------|---|------------------------|
| TIMOTHY CLARK CRUSE | § | |
| | § | |
| VS. | § | CAUSE NO. 16415 |
| | § | |
| ZURICH AGENCY SERVICES, INC. | § | |
| AND ABEL MONROY OLVERA | § | |

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **TIMOTHY CLARK CRUSE**, hereinafter called Plaintiff, complaining of and against **ZURICH AGENCY SERVICES, INC. AND ABEL MONROY OLVERA**, hereinafter called Defendants, and in support of a cause of action which show as follows:

I.

PARTIES

Plaintiff, **TIMOTHY CLARK CRUSE** is a resident of Angelina County, Texas.

Defendant, **ZURICH AGENCY SERVICES, INC.** is an insurance company organized under the laws of the State of Texas and authorized to engage in the business of insurance in Texas. Defendant has previously answered and appeared before this court.

Defendant, **ABEL MONROY OLVERA** is a resident of Lufkin, Angelina County, Texas. Defendant has previously answered and appeared before this court.

II.

DISCOVERY

Discovery is intended to be conducted under Level II.

III.

FACTS

Plaintiff was involved in a motor vehicle accident on May 5, 2008 on Highway 59 South Frontage Road in Livingston, Polk County, Texas. As a result, Plaintiff suffered extensive and extreme personal injuries that have resulted in permanent damage to his body in general.

IV.

VENUE

Venue is proper in Angelina County, Texas because both Plaintiff and Defendant reside in Angelina County, Texas.

V.

NEGLIGENCE OF ABEL MONROY OLVERA

The collision described above, and the resulting injuries and damages suffered by Plaintiff, were proximately caused by the negligent conduct of ABEL MONROY OLVERA in one or more of the following respects:

1. Failure to maintain a proper lookout as a person of ordinary care would of kept under the same or similar circumstances;
2. Failure to make timely application of his brakes as a person using ordinary care would have done under the same or similar circumstances;

3. Failure to take proper evasive action to avoid the collision in question as a person using ordinary care would have done under the same or similar circumstances;
4. Failure to control his speed;
5. Failure to yield right of way;
6. Driving too fast under the conditions as they existed at the time of the accident.

Each of these acts and omissions comes singularly, or in combination, constitute a negligence that proximately caused the occurrence made the basis of this action and the Plaintiff's injuries and damages as described below.

VI.

CONTRACT OF INSURANCE

At the time of this accident Plaintiff had in effect with Defendant, Zurich Agency Services, Inc. a policy of insurance numbered CP0281728303 which provided underinsured motorists coverage benefits with limits of \$100,000.00 per accident. This policy was in effect at the time of the accident and all conditions precedent have been satisfied.

VII.

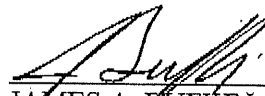
DAMAGES

Plaintiff has suffered property damages, physical injuries, pain and suffering, medical bills, emotional anguish, physical impairment, lost wages, all past and future for which Defendants are liable. Defendant, **ZURICH AGENCY SERVICES, INC.** is

liable under the underinsured motorists coverage afforded by the policy issued by Defendant to Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final hearing Plaintiff have judgment of and against Defendants, for all damages which he may reasonably establish, for prejudgment interest at the legal rate, for postjudgment interest at the legal rate, costs of court, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, the undersigned attorney of record in the above-numbered and styled cause, do hereby certify that on the 21st day of January, 2011, I served a true and correct copy of the foregoing First Amended Original Petition to:

Mr. Kelly B. Lea
Wilson, Robertson & Cornelius
909 ESE Loop 323, Suite 400
Tyler, Texas 75701

- ☐ By certified mail
- ☐ By regular mail
- ☐ By overnight mail
- ☐ By hand delivery
- ☒ By Facsimile

Ms. Rebecca DiMasi
Van Osselaer & Buchanan, LLP
9600 Great Hills Trail, Suite 300 West
Austin, Texas 78759

- ☐ By certified mail
- ☐ By regular mail
- ☐ By overnight mail
- ☐ By hand delivery
- ☒ By Facsimile



JAMES A. BUFKIN

IN THE COUNTY COURT AT LAW NUMBER ONE OF ANGELINA COUNTY
STATE OF TEXAS

| | | |
|---------------------------|---|-----------------|
| TIMOTHY CLARK CRUSE | § | |
| | § | |
| VS. | § | CAUSE NO. 16415 |
| | § | |
| AMERICAN ZURICH INSURANCE | § | |
| COMPANY AND ABEL MONROY | § | |
| OLVERA | § | |

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **TIMOTHY CLARK CRUSE**, hereinafter called Plaintiff, complaining of and against **AMERICAN ZURICH INSURANCE COMPANY AND ABEL MONROY OLVERA**, hereinafter called Defendants, and in support of a cause of action which show as follows:

I.

PARTIES

Plaintiff, **TIMOTHY CLARK CRUSE** is a resident of Angelina County, Texas.

Defendant, **AMERICAN ZURICH INSURANCE COMPANY** is an insurance company organized under the laws of the State of Texas and authorized to engage in the business of insurance in Texas. Defendant has previously answered and appeared before this court.

Defendant, **ABEL MONROY OLVERA** is a resident of Lufkin, Angelina County, Texas. Defendant has previously answered and appeared before this court.

II.

DISCOVERY

Discovery is intended to be conducted under Level II.

III.

FACTS

Plaintiff was involved in a motor vehicle accident on May 5, 2008 on Highway 59 South Frontage Road in Livingston, Polk County, Texas. As a result, Plaintiff suffered extensive and extreme personal injuries that have resulted in permanent damage to his body in general.

IV.

VENUE

Venue is proper in Angelina County, Texas because both Plaintiff and Defendant reside in Angelina County, Texas.

V.

NEGLIGENCE OF ABEL MONROY OLVERA

The collision described above, and the resulting injuries and damages suffered by Plaintiff, were proximately caused by the negligent conduct of **ABEL MONROY OLVERA** in one or more of the following respects:

1. Failure to maintain a proper lookout as a person of ordinary care would of kept under the same or similar circumstances;
2. Failure to make timely application of his brakes as a person using ordinary care would have done under the same or similar circumstances;

3. Failure to take proper evasive action to avoid the collision in question as a person using ordinary care would have done under the same or similar circumstances;
4. Failure to control his speed;
5. Failure to yield right of way;
6. Driving too fast under the conditions as they existed at the time of the accident.

Each of these acts and omissions comes singularly, or in combination, constitute a negligence that proximately caused the occurrence made the basis of this action and the Plaintiff's injuries and damages as described below.

VI.

CONTRACT OF INSURANCE

At the time of this accident Plaintiff had in effect with Defendant, **AMERICAN ZURICH INSURANCE COMPANY** a policy of insurance numbered CP0281728303 which provided underinsured motorists coverage benefits with limits of \$1,000,000.00 per accident. This policy was in effect at the time of the accident and all conditions precedent have been satisfied.

VII.


DAMAGES

Plaintiff has suffered property damages, physical injuries, pain and suffering, medical bills, emotional anguish, physical impairment, lost wages, all past and future for which Defendants are liable. Defendant, **AMERICAN ZURICH INSURANCE**

COMPANY is liable under the underinsured motorists coverage afforded by the policy issued by Defendant to Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final hearing Plaintiff have judgment of and against Defendants, for all damages which he may reasonably establish, for prejudgment interest at the legal rate, for postjudgment interest at the legal rate, costs of court, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, the undersigned attorney of record in the above-numbered and styled cause, do hereby certify that on the 5th day of April, 2011, I served a true and correct copy of the foregoing Second Amended Original Petition to:

Ms. Rebecca DiMasi
Van Osselaer & Buchanan, LLP
9600 Great Hills Trail, Suite 300 West
Austin, Texas 78759

☐ By certified mail
☐ By regular mail
☐ By overnight mail
☐ By hand delivery
☒ By Facsimile



JAMES A. BUFKIN